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UNITED PARCEL SERVICE, INC.,  
9 an Ohio Corporation

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 EMILIA SANTOS, an individual, on behalf of  
herself and all others similarly situated,

14 Plaintiffs,

15 vs.

16 UNITED PARCEL SERVICE, INC., a  
17 Delaware Corporation; UNITED PARCEL  
SERVICE, INC., an Ohio Corporation; DOES 1  
18 through 10, inclusive,

19 Defendants.  
20  
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Case No. 3:18-cv-03177-EMC

**DEFENDANT UNITED PARCEL  
SERVICE, INC.'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT**

Date: May 6, 2021  
Time: 1:30 p.m.  
Judge: Hon. Edward M. Chen  
Courtroom: 5

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1 **I. INTRODUCTION**

2 Plaintiff Emilia Santos (“Plaintiff”), a former Part-Time Preload Supervisor who worked  
 3 for United Parcel Service, Inc., an Ohio Corporation (“UPS”) for less than seven months, brings  
 4 claims against UPS for a variety of wage and hour violations, on her own behalf and on behalf of  
 5 other Part-Time Preload Supervisors (“Preload PTS”). On November 18, 2020 the Court denied  
 6 Plaintiff’s Motion for Class Certification (Dkt. No. 115) as to five out of six subclasses. Dkt. No.  
 7 115, *passim*. The Court certified one putative class comprised of Preload PTS “who were not  
 8 provided with accurately itemized wage statements listing all hours worked and other information  
 9 required to be listed under California Labor Code § 226(a) and Wage Order 9.” Dkt. No. 115,  
 10 15:19-16:1.

11 UPS now moves for summary judgment on the Fourth Cause of Action as to Plaintiff and  
 12 the certified class because, at all times relevant to this action, UPS provided all Preload PTS with  
 13 accurately itemized wage statements, containing all the elements required by the California Labor  
 14 Code and Wage Order 9. Specifically, the Labor Code and Wage Order 9 require UPS to list  
 15 certain specific pieces of information on employee’s wage statements. Because UPS’s wage  
 16 statements contain the applicable nine categories of information required by the Labor Code and  
 17 the four categories required by Wage Order 9, summary judgment is proper on Plaintiff’s  
 18 individual and class claim as to the Fourth Cause of Action.

19 UPS also moves for partial summary judgment on Plaintiff’s claim for civil penalties  
 20 under the Private Attorneys General Act (“PAGA”) as it relates to the wage statements because  
 21 where, as here, Plaintiff cannot establish a violation of the Labor Code or the applicable Wage  
 22 Order, no civil penalties under PAGA attach.

23 Furthermore, UPS moves for summary judgment as to the Second Cause of Action on  
 24 Plaintiff’s individual rest period claim. During her deposition, Plaintiff admitted that during her  
 25 shifts as a Part-Time Preload Supervisor, the entire building would shut down and everyone  
 26 would take an uninterrupted 15-minute rest break. Deposition of Emilia Santos (“Santos Depo.”)

27 //

28 //

1 //

2 85:10-19.<sup>1</sup> Plaintiff's admissions that she was provided with uninterrupted rest-breaks are fatal to  
3 her individual claim.

## 4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 5 **A. Overview of UPS's Operations and Part Time Supervisor Position**

6 UPS is a global transportation and logistics company that employs tens of thousands of  
7 hourly, non-exempt employees throughout California, including drivers, loaders, unloaders,  
8 preloaders, sorters, clerical and other office staff, part time supervisors and many others. Brown  
9 Decl., Ex. L (Waters Decl. ¶2). The majority of hourly employees in the smaller "package  
10 centers" and larger "hubs" unload, sort, and load packages of various sizes into and out of  
11 vehicles, under the supervision of hourly part-time non-exempt supervisors. *Id.* These  
12 employees work one of several different shifts, with shift start times varying depending on the  
13 anticipated package volume. *Id.* One of the shifts (or "sorts") is the "Preload." *Id.* Preload  
14 generally runs from 3:30 a.m. until 9 a.m. or 9:30 a.m. Brown Decl., Ex. B (Castaldi-Inman Decl.,  
15 ¶ 4). During the relevant time period, there were approximately 2,104 Preload PTS, of which  
16 approximately 1,066 received at least one California Meal Period Premium payment. Declaration  
17 of Derrick Waters in Support of Defendant's Motion for Summary Judgment dated March 29,  
18 2021 ("Waters MSJ Decl.") ¶ 2.

### 19 **B. Plaintiff's Employment with UPS**

20 Plaintiff worked as a Preload PTS in San Ramon for less than seven months between July  
21 2017 and February 2018. Brown Decl., Ex. A (Santos Depo. 62:11-17). Plaintiff typically  
22 worked 5.5 hours per day, although there were days that she worked less. *Id.* (Santos Depo.  
23 79:9-16.) For example, at one point, Plaintiff informed UPS that she could not work longer than  
24 4½ hours because she had a second job at Southwest Airlines, which UPS accommodated. *Id.*  
25 (Santos Depo. 14:24-15:1; 126:18-127:15.) From October/November 2017 through the end of

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26  
27 <sup>1</sup> Declarations and deposition testimony of Plaintiff, Preload PTS, and other UPS employees  
28 relied on by Defendant have been authenticated by the concurrently filed declaration of Elizabeth  
A. Brown ("Brown Decl.") dated March 30, 2021, and attached as exhibits thereto.



1 her employment (in other words, during the only “peak” of her employment), Plaintiff performed  
 2 “paperwork” on the upper level of the facility as an accommodation for a foot injury. *Id.* (Santos  
 3 Depo. 36:11-21; 37:23-38:3.)

4 During her new hire orientation, Plaintiff received training on UPS’s meal period and rest  
 5 break policies and policy prohibiting off-the-clock work. Brown Decl., Ex. A (Santos Depo.  
 6 90:14-25; 91:1-7; 101:7-25). Plaintiff understood that UPS’s policy required that she promptly  
 7 notify her supervisor or Human Resources if, for any reason, she did not have an opportunity to  
 8 take a meal or rest period, or if she worked during meal or rest breaks. *Id.* (Santos Depo. 125:3-  
 9 18; 126:3-5.)

10 If UPS failed to provide a Preload PTS a meal period, it paid a meal period premium. On  
 11 occasion, Plaintiff was paid meal period premiums. Brown Decl., Ex. A (Santos Depo. 164:1-16;  
 12 164:22-165:1.) Other Preload PTS likewise received meal period premiums on occasion. Brown  
 13 Decl., Exs. C, D, E, F, and G (Fecher Depo 34:14-16; Muela Depo. 26:11-22; Flores Decl. ¶ 9;  
 14 Kelly Decl. ¶ 9, Mendoza Decl. ¶ 13).

15 Plaintiff received additional training on the Meal and Rest Periods/Off-the-Clock Work  
 16 policy throughout her employment during Prewrite Communication Meetings (“PCM”). Brown  
 17 Decl., Ex. A (Santos Depo. 122:3-123:16, 126:6-17, Ex. 5). Plaintiff acknowledged that the Meal  
 18 and Rest Periods/Off-the-Clock Work policy was posted outside the supervisor’s office at the San  
 19 Ramon facility. *Id.* (Santos Depo. 123:17-21.) Plaintiff testified that she had never seen anything  
 20 in writing that contradicts UPS’s Meal and Rest Periods Off-the-Clock Work policy. *Id.* (Santos  
 21 Depo. 122:25-125:2; *see also* 100:19-101:2.) Furthermore, nobody ever told Plaintiff that these  
 22 policies did not apply to her as a Preload PTS. *Id.* (Santos Depo. 85:4-6.)

23 Plaintiff testified that during her employment with UPS as a Preload PTS, the entire  
 24 building would shut down and everyone would take an uninterrupted 15-minute rest break.  
 25 Brown Decl., Ex. A (Santos Depo. 85:10-19). Plaintiff admitted that this “happened every day”  
 26 and that no one prevented her from taking a 15-minute rest break and that she never worked  
 27 during her rest breaks. *Id.* (Santos Depo. 85:20-22; 152:21-153:4.)

28 In early February 2018, Plaintiff informed Human Resources that she was resigning from

1 her UPS employment because Southwest believed that she was an “asset” and wanted her to  
 2 move up within the company, and because she claimed that her UPS supervisor took a photo of  
 3 the front of her pants. Brown Decl., Ex. A (Santos Depo. 147:19-148:5). Plaintiff did not say  
 4 anything else to anyone about the reason why she resigned and did not complain about her wage  
 5 statements or her meal and rest breaks. *Id.* (Santos Depo. 148:15-20.) Plaintiff later admitted that  
 6 before she left, she had already decided to sue UPS and had attempted to collect evidence for  
 7 such a lawsuit. *Id.* (Santos Depo. 26:23-27:7; 27:20-28:12.)

8 **C. UPS’s Wage Statements**

9 During the relevant time period,<sup>2</sup> all Preload PTS in California received itemized wage  
 10 statements. Waters MSJ Decl. ¶ 3. Some Preload PTS received live checks and wage statements  
 11 together. *Id.* Most frequently, however, Preload PTS received their wages via direct deposit and  
 12 received wage statements separately. *Id.* Itemized wage statements were and continue to be  
 13 available to Preload PTS online at UPSers.com. Waters MSJ Decl., ¶ 4. Meal period premiums  
 14 are denoted on Preload PTS wage statements as “Cal Meal.” Waters MSJ Decl. ¶ 5, Ex. A; Brown  
 15 Decl. (Santos Depo. 164:22-165:1); Exs. C and H (Fecher Depo 35:16-36:23; Rico Decl. ¶ 10).

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27 \_\_\_\_\_  
 28 <sup>2</sup> The relevant time period for the certified wage statement claim is May 29, 2017 to present.

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The format of the wage statements issued to Plaintiff and other Preload PTS During the relevant time period is as follows:<sup>3</sup>:


 [Return to Paycheck List](#)

 MOVING OUR WORLD FORWARD BY DELIVERING WHAT MATTERS

Employee Name		Work Location		Advice No.	
- EMILIA L SANTOS		0386 CASNR 920 9616 P ZZZ 0		0386013041	
Employee ID	Tax ID	Fed Status	St Wrk	St Res Status	Advice Date
- 5077277	XXX-XX-5121	S 00	S 00		12/14/2017

Earnings Statement	Period Begin	Period End	Total Earned	Total Taxes	Total Deducted	Net Amount
-	12/03/2017	12/09/2017	1,359.00	399.79	106.26	852.95

Earnings				Taxes - Deductions - Misc		
Description	Rate	Miles	Hours	Gross	Description	Current
CURRENT PAY RATE 18.00					TAXES	
- REGULAR	18.000		40.00	720.00	FICA	82.73
- OVERTIME	27.000		23.00	621.00	FICA MEDICARE	19.34
- CAL MEAL				18.00	FEDERAL TAX	220.18
- TOTAL HOURS WORKED			63.00		ST TAX- CA	65.53
- CURRENT TOTALS				1,359.00	STATE DISAB	12.01
- Y-T-D TOTALS		1,128.27		18,800.01	TOTALS	399.79
					DEDUCTIONS	
					BFTAX FLEX	24.72
					401K DED	6 81.54
					TOTALS	106.26
- VAC 0.00 D OPD 0.00 D OPW 0.00 H OTH 0.00 D PST 11.00 H						

 Employee Address

P.O. BOX 15  
SUNOL, CA, 94586

UNITED PARCEL SERVICE, INC.  
55 GLENLAKE PARKWAY NE  
ATLANTA, GA 30328

#### **D. Plaintiff Understood UPS's Wage Statements and Meal Premium Payments.**

Plaintiff testified that her pay-stubs accurately reflected the amount of money she was paid, and that she was provided her paystubs in a timely manner. Brown Decl., Ex. A (Santos Dep. 57:19-58:9 ("Q: Okay. So I'm talking about the pay stubs that you received, okay -- A: Okay. Q: -- during your employment as a part-time supervisor at UPS. Those pay stubs reflect what you were actually paid, correct? A: Yes. ... Q: And you're not claiming that UPS did not give you pay stubs in a timely manner, are you? A: No.")) Plaintiff further agreed that her wage statements did not contain any inaccuracies. *Id.* (Santos Depo 57:24-58:6 ("Q: Those pay stubs reflect what you were actually paid, correct? A: Yes. Q: They don't contain any inaccuracies. Is

<sup>3</sup> A true and correct copy of the December 14, 2017 wage statement for Plaintiff is attached as Exhibit A to the Declaration of Derrick Waters. Part Time Preload Supervisors who opt to receive their pay through live checks receive wage statements attached to the checks. *See* Waters MSJ Decl. ¶ 3.

1 that correct? A: No. No. Q: You agree? A: Yes.”.)

2 Plaintiff further admitted that when she missed meal periods, she received meal  
3 premiums, and that she understood that the meal premiums were paid at her hourly pay rate. *Id.*  
4 (Santos Depo. 164:1-16 (“Q: You received the California meal period premium at your hourly  
5 rate of pay. Do you see that? A: Yes. Q: So you recall that you were, in fact, paid meal  
6 premiums for meal periods you did not take? A: Yes. Q: -- UPS Paid you California meal period  
7 premiums. Is that correct? A: Yes”); 163:22-25 (“Q: Pay period ending December 9th, 2017,  
8 you were paid another California meal period premium. Do you see that? A: Yes”).)

9 **E. Class Member Testimony Confirms that Employees Can Ascertain Required**  
10 **Information from the UPS Wage Statements.**

11 Plaintiff’s testimony is consistent with class member testimony. When deposed in  
12 connection with the motion for class certification, other Preload PTS agreed that they received  
13 meal period premiums and understood how those premiums were paid and noted on the wage  
14 statements, the number of meal period premiums paid, and the rate at which they were paid.

- 15 • Clement Depo 21:8-13 (“Q. As a part-time supervisor, did you understand that  
16 under UPS policy, if an employee is not provided with a meal period, the  
17 employee receives a meal period premium equal to one hour of pay? A. Yes.”)
- 18 • Fecher Depo 34:14-16 (“Since I started looking at my pay stubs with the  
19 coronavirus, I’ve noticed several of them, I’ve gotten several California meals.”)
- 20 • Fecher Depo 35:16-36:23 (“Q: Okay. Sir, this is a Pay History Report and this is  
21 for the pay period ending December 14, 2019. I’m not sure if you can see my  
22 cursor, but I’ll point on the document. Do you see that? A: Yes, sir. Q: And do  
23 you see that there are California meal -- there’s an earning code, Earn CD it says  
24 on the document, of CAM and the description is California meal? Do you see  
25 that? A: Yes, sir. Q: Do you understand that to be a California meal premium?  
26 A: I do now, yes, sir. Q: And at this time your hourly rate, your regular pay rate is  
27 \$21.68 per hour; is that correct? A: Currently, yes, sir. Q: And would that have  
28 been the case in December of 2019 when this paycheck was issued? A: I can’t

recall if I got my pay raise then at that time because I know they usually do it the first quarter. Q: Okay. Well, this document represents that the pay rate is \$21.68 and it appears that you were paid \$108.40 in California meal premiums. Do you see that? A: Yes, sir. **Q: So you would be able to divide \$108.40 by \$21.68 and determine that that would represent five hours of pay; right? A: Yes, sir.**") (emphasis added)

Brown Decl., Exs. C and I.

Other class members, likewise, admitted that they understood the amount and the rate of their meal premiums on their wage statements:

- Rico Decl. ¶ 10 ("My supervisor always approved my time card and the CAM<sup>4</sup> payments. When I saw the CAM payment on my paychecks, I always knew how many premiums were included in the payment and I did not find the CAM entries confusing.")
- Valasco Decl. ¶ 13 ("Sometimes I voluntarily forgo my lunch break so that I can go home earlier. I do not record my meal break when I do this, and I am paid the meal premium with my paycheck. My supervisor has asked me if my time is accurate on the days it does not show a meal period. I confirm that my time is accurate and he approves the payment of the meal premium. **I have never had a problem counting the number of meal premiums I receive in a paycheck.**")
- Mendoza Decl. ¶ 13 ("When I saw the CAM payment on my paychecks, I always knew how many premiums were included in the payment and I did not find the Cal Lunch entries confusing.") (emphasis added)
- Murillo Decl. ¶ 12 ("It is easy to count how many meal violations are in the payment and I am not confused about the number.")

Brown Decl. Exs. G, H, J, and K.

//

<sup>4</sup> California meal premium payment, which appears as "Cal Meal" on wage statements, is coded in UPS's payroll system under the code "CAM." Waters MSJ Decl. ¶ 5.

//

**F. Plaintiff's Motion for Class Certification and Court Order Certifying the Wage Statement Subclass**

On August 18, 2020 2020, Plaintiff moved for class certification as to the class of Preload PTS on six different subclasses:

1. A subclass of all former and current Preload PTS who were not paid for all hours worked during the class period ("The Unpaid Time Subclass");
2. A subclass of all former and current Preload PTS who worked more than five hours, or more than six hours if subject to a valid first meal break waiver, and/or worked more than 10 hours, or more than 12 hours if subject to a valid second meal break waiver, and were not provided with uninterrupted meal periods of at least 30 minutes ("The Meal Break Subclass");
3. A subclass of all former and current Preload PTS who signed a meal break waiver when they held a different position than that of a part time supervisor, and did not sign a new meal break wavier when they changed position to part time supervisor ("The Meal Break Waiver Subclass");
4. A subclass of all former and current Preload PTS who were not provided an uninterrupted rest break of at least 10 minutes for each four hours of work ("The Rest Break Subclass");
5. A subclass of all former and current Preload PTS who were not provided with an accurately itemized wage statement list all hours worked and "other information" required to be listed under California Labor Code section 226(a) ("The Wage Statement Subclass"); and
6. A subclass of all former and current Preload PTS who were not paid all wages "due and ongoing" at the time of termination ("The Waiting Time Subclass").

Dkt. 64, p.13.

On November 18, 2020, the Court denied class certification as to subclasses one, two, three, four, and six and granted it as to subclass five – the Wage Statement Subclass. Dkt. No.

1 115. In doing so, the Court certified a subclass of Preload PTS “who were not provided with  
2 accurately itemized wage statements listing all hours worked and other information required to be  
3 listed under California Labor Code § 226(a) and Wage Order 9.” Dkt. No. 115, 15:19-16:1.

4 With respect to the Wage Statement Subclass, Plaintiff argued that class members’ wage  
5 statements were inaccurate and violated Labor Code section 226(a) on two different grounds.  
6 First, Plaintiff argued derivative claim that UPS’s wage statements were inaccurate because UPS  
7 “required Class Members to record meal breaks they did not take” which in turn lead UPS to  
8 “knowingly issue wage statements that did not show all hours worked.” Dkt. No. 64, p. 20. This  
9 theory was expressly rejected by the Court. Dkt. No. 115, p. 14 (refusing to certify Plaintiff’s  
10 derivative wage statement claims on the grounds that putative class members’ wage statements  
11 were inaccurate due to allegations that UPS required putative class members to record meal  
12 breaks they did not take because “UPS’s records show that meal breaks are uniformly present on  
13 putative class members’ timecards. The vast majority of analyzed time shifts (98.1%) *did* show a  
14 meal break on shifts greater than five hours.”).

15 Plaintiff also argued that UPS’s wage statements directly violated section 226(a) because  
16 “UPS does not record meal break premium payments as a work activity hour.” Instead, Plaintiff  
17 contended that UPS represents meal premiums paid to employees as “a flat dollar amount.” Dkt. 64,  
18 pp. 20-21. The Court limited its certification to Plaintiff’s wage statement subclass on this theory,  
19 explaining that the “[alleged] failure to provide the requisite specificity” is an issue that “can be  
20 adjudicated in no one stroke” because “the form of the wage statement is uniform for all members of  
21 the putative class.” Dkt. No. 115, p. 15.

### 22 **III. SUMMARY JUDGMENT IS PROPER AS TO THE PLAINTIFF AND THE** 23 **CERTIFIED CLASS ON THE WAGE STATEMENT CLAIM**

24 Summary judgment is proper “if the movant shows that there is no genuine dispute as to  
25 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.  
26 56(a). Rule 56 also authorizes partial summary judgment in order to limit the issues to be tried.  
27 *State Farm Fire & Cas. Co. v. Geary*, 699 F. Supp. 756, 759 (N.D. Cal. 1987). Once the moving  
28 party demonstrates the absence of a factual dispute, the nonmoving party can defeat summary



judgment only by designating “specific facts showing that there is a genuine issue for trial.”  
*Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

As detailed below, UPS is entitled to judgment as a matter of law as to Plaintiff and the sole certified class claim related to alleged violation of Labor Code Section 226 and Wage Order 9. UPS is also entitled to summary judgment as to Plaintiff’s individual rest break claim.

**A. Labor Code Section 226 and Wage Order 9 Require Employers to Issue Itemized Wage Statements Containing Certain Limited Information**

California Labor Code Section 226(a) requires that employers provide their employees with semimonthly

accurate itemized [wage] statement[s] in writing showing: (1) gross wages earned, (2) total hours worked by the employee ... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer ... and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Wage Order 9, which applies to the transportation industry, states that:

[e]very employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.”

IWC Wage Order #9, §7(B).

**B. UPS’s Wage Statements Contain All the Information Required by Labor Code Section 226(a) and Wage Order 9**

With respect to Plaintiff and the certified class of Preload PTS, the wage statements contain all the elements required by the Labor Code and the Wage Order. As such, summary judgment as to the certified Wage Statement Subclass is proper.

**1. UPS Wage Statements Contain All the Elements Required by Section 226(a) and Wage Order 9**

As noted above, Labor Code Section 226(a) requires that the employer list up to nine



items on the wage statements. Wage Order 9 requires four. UPS wage statements contain all the required elements of section 226(a), to the extent they apply<sup>5</sup>:

 [Return to Paycheck List](#)

 MOVING OUR WORLD FORWARD BY DELIVERING WHAT MATTERS

Employee Name				Work Location		Advice No.	
- EMILIA L SANTOS 7				0386 CASNR 920 9616 P ZZZ 0		0386027176	
Employee ID		Tax ID		Fed Status	St Wrk	St Res Status	Advice Date
- 5077277		XXX-XX-5121		S 00	S 00	12/21/2017	
Earnings Statement	Period Begin	Period End	Total Earned	Total Taxes	Total Deducted	Net Amount	
-	12/10/2017	12/16/2017	1,212.75	338.85	97.49	776.41	
Earnings				Taxes - Deductions - Misc			
Description	Rate	Miles	Hours	Gross	Description	Current	YTD
CURRENT PAY RATE 18.00				TAXES			
- REGULAR	18.000		40.00	720.00	FICA	73.65	1,216.73
- OVERTIME	27.000		18.25	492.75	FICA MEDICARE	17.23	284.56
- TOTAL HOURS WORKED			58.25		FEDERAL TAX	185.81	2,363.13
- CURRENT TOTALS				1,212.75	ST TAX- CA	51.47	425.04
- Y-T-D TOTALS		1,186.52	20,012.76		STATE DISAB	10.69	176.62
TOTALS						338.85	
DEDUCTIONS							
BFTAX FLEX						24.72	395.52
401K DED 6						72.77	435.66
TOTALS						97.49	
- VAC 0.00 D OPD 0.00 D OPW 0.00 H OTH 0.00 D PST 11.00 H							
Employee Address				P.O. BOX 15 SUNOL, CA, 94586			
				UNITED PARCEL SERVICE, INC.			
				55 GLENLAKE PARKWAY NE 8			
				ATLANTA, GA 30328			

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<sup>5</sup> UPS Preload PTS do not receive piece rate compensation. As such, section 226(a)(3) does not apply.

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Likewise, UPS wage statements contain all the required elements of Wage Order 9:

 [Return to Paycheck List](#)

 MOVING OUR WORLD FORWARD BY DELIVERING WHAT MATTERS

Employee Name <b>3</b>		Work Location		Advice No.	
- EMILIA L SANTOS		0386 CASNR 920 9616 P ZZZ 0		0386027176	
Employee ID	Tax ID	Fed Status	St Wrk	St Res Status	Advice Date
- 5077277	XXX-XX-5121	S 00	S 00		12/21/2017

Earnings Statement	Period Begin	Period End	Total Earned	Total Taxes	Total Deducted	Net Amount
-	12/10/2017	12/16/2017	1,212.75	338.85	97.49	776.41

Earnings					Taxes - Deductions - Misc		
Description	Rate	Miles	Hours	Gross	Description	Current	YTD
CURRENT PAY RATE 18.00					TAXES		
- REGULAR	18.000		40.00	720.00	FICA	73.65	1,216.73
- OVERTIME	27.000		18.25	492.75	FICA MEDICARE	17.23	284.56
- TOTAL HOURS WORKED			58.25		FEDERAL TAX	185.81	2,363.13
- CURRENT TOTALS				1,212.75	ST TAX- CA	51.47	425.04
- Y-T-D TOTALS			1,186.52	20,012.76	STATE DISAB	10.69	176.62
					TOTALS	338.85	
					DEDUCTIONS		
					BFTAX FLEX	24.72	395.52
					401K DED	6	72.77
					TOTALS	97.49	
- VAC 0.00 D OPD 0.00 D OPW 0.00 H OTH 0.00 D PST 11.00 H							

**Employee Address**

P.O. BOX 15  
SUNOL, CA, 94586

UNITED PARCEL SERVICE, INC. **4**  
55 GLENLAKE PARKWAY NE  
ATLANTA, GA 30328

Because UPS's wage statements issued to Plaintiff and other Preload PTS contain all the elements required by section 226(a) and the Wage Order 9, summary judgment as to the certified class on Plaintiff's Fourth Cause of Action is proper.

## 2. The California Meal Period Payment Inclusion Does Not Render UPS Wage Statements Unlawful

As demonstrated above, UPS's wage statements issued to Plaintiff and Preload PTS contain all the elements required by the Labor Code and the Wage Order. The notation of California meal premiums on some of the wage statements issued to a subset of the certified class of Preload PTS does not render those class members' wage statements unlawful.

As set forth in the Motion for Class Certification, Plaintiff's certified wage statement claim is predicated on an argument that UPS's wage statements violated section 226(a) because UPS lists its meal premium payments as a lump sum and does not specifically state the number of meal premiums paid or the rate at which an employee's meal premium is paid. Dkt. 64, p. 20, 21.

1 Plaintiff further contended that because UPS's wage statements list meal premiums as a lump sum  
 2 amount owed "employees are not able to discern from a wage statement alone if they are being paid  
 3 meal break premiums correctly and for how many hours." *Id.* at p. 21. Finally, Plaintiff claimed  
 4 that because UPS's wage statements do not list the hourly rate of a meal premium, the wage  
 5 statements violate section 226(a). *Id.*

6 Plaintiff's wage statement claim, narrowed to the California Meal Period Premium  
 7 allegation, fares no better than a general argument that UPS's wage statements do not contain all  
 8 the require elements from the Labor Code and the Wage Order 9.

9 **a. UPS Is Not Required to List Rate or Number of Meal**  
 10 **Premiums Because Meal Premiums are Not "Wages" or "Hours**  
 11 **Worked" as Contemplated by Section 226(a)**

12 Plaintiff's argument fails at the onset because UPS is not required to list the number of  
 13 meal period premiums or the rate at which they are paid as they are not enumerated in either the  
 14 Labor Code or the Wage Order. There are nine itemized requirements listed in section 226, and  
 15 UPS's wages statements contain all of the enumerated items. *See Price v. Starbucks*, 192 Cal.  
 16 App. 4th 1136, 1142 (2011), *rev. denied* (noting that section 226 lists nine specific  
 17 requirements); *see* Section III.A *supra*. There are four itemized requirements listed in Section  
 18 7(B) of Wage Order 9, and UPS's wage statements contain all of those items. *See* Section III.B.1  
 19 *supra*. There is no requirement that UPS provide wage statements that specifically state the total  
 20 number of premiums paid. It is axiomatic that an employer cannot be held liable for violation of  
 21 section 226 unless its wage statements actually omit something that is required by law. *See e.g.*  
 22 *Palazzolo v. Children's Hospital Los Angeles*, No. B216508, 2010 WL 4869755, at \*6 (Cal. Ct.  
 23 App. Dec. 1, 2010) (denying plaintiff's wage statement claim predicated on the defendant's  
 24 failure to provide a total summation of regular hours worked with overtime hours worked because  
 25 section 226 "does not require the employer to list total regular hours and the total overtime hours  
 26 worked during the pay period, and then add those two figures together in a separate line listing  
 27 the sum of all hours worked."). Accordingly, as a matter of law, UPS's wage statements are  
 28 compliant and Plaintiff's class claims should be dismissed.

1        *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019) is instructive.  
 2        There, the Court held that that derivative wage statement claims are not available to employees who  
 3        allege that an employer failed to pay meal premiums. The *Naranjo* court, citing *Kirby*, held that  
 4        because meal premiums are not wages “earned” but rather “a statutory remedy for an employer’s  
 5        conduct” derivative wage statement claims are not available when the employee only alleges  
 6        inaccurate wage statement due to the employer’s failure to pay premiums. *See Naranjo*, 40 Cal.  
 7        App. 4th at 474 (“The language in sections 200, 203, and 226 is clear and unambiguous and there  
 8        is nothing for this court to interpret or construe. Accordingly, we hold that section 226.7 actions  
 9        [alleging to failure to pay premiums] do not entitle employees to pursue the derivative penalties in  
 10        sections 203 and 226.”) (internal citation omitted). Therefore, even if UPS paid no meal period  
 11        premiums at all or paid them but did not list them on the wage statement no wage statement  
 12        violation would arise. *See also Sanchez v. New York & Co. Stores, Inc.*, No. 2:20-CV-02380-  
 13        RGK-GJS, 2020 WL 5498066, at \*3 (C.D. Cal. June 29, 2020) (“rest break premiums do not  
 14        constitute wages for purposes of a § 226(a) analysis”); *Benitez v. W. Milling, LLC*, No. 1:18-CV-  
 15        01484-SKO, 2020 WL 309200, at \*9 (E.D. Cal. Jan. 21, 2020). California meal period  
 16        premiums are, by their nature, not “hours worked.” They are a penalty, paid when an employee  
 17        was not provided a meal period. *Kirby v. Immoos*, 53 Cal. 4th 1244, 1259 (2012) (action for  
 18        premiums is not action for the recovery of wages).

19        Where, as here, UPS paid *and* listed the premiums on the wage statement, going above  
 20        and beyond what the law requires, no additional violation can be found for purported failure to  
 21        add a wage rate at which the premium is paid. Indeed, expressing the meal period premium in  
 22        terms of hours “worked” and rate at which it was “worked” would render the wage statements  
 23        confusing and, thus, contrary to the stated aim of the Labor Code.

#### 24                                    **b. Meal Period Premiums are Properly Represented**

25        Even if UPS were required to identify the number of meal period premiums paid on the  
 26        wage statement, UPS has substantially complied with this requirement.

27        Labor Code section 226 requires employers to “provide accurate itemized statements to  
 28        their employees.” *Morgan v. United Retail Inc.*, 186 Cal. App. 4th 1136, 1143 (2010), *rev.*

1 *denied*. Section 226(a)(9) provides in relevant part: “Every employer shall ... furnish each of his  
 2 or her employees ... an accurate itemized statement in writing **showing** [various elements  
 3 required by the Section].” Lab. Code§ 226(a)(9) (emphasis added). The California Court of  
 4 Appeal held that the term “showing” in section 226(a) must be given its “ordinary, usual  
 5 meaning,” which, *inter alia*, means “to make evident or apparent: serve as the means to reveal or  
 6 make visible.” *Id.* at 1146. Examining plaintiff’s contention in *Morgan* that the wage statement  
 7 was inaccurate because it did not contain a notation for “total” hours, the court concluded that it  
 8 was undisputed that an employee could simply add the hours together to obtain his or her total  
 9 hours “without referring to time records or other documents,” the Court concluded:

10 There is nothing in the plain language of section 226 to support  
 11 [plaintiff’s] argument that wage statements which accurately list  
 12 the total regular hours and overtime hours worked during the pay  
 period must also contain a separate category with the sum of those  
 two figures.

13 *Id.* at 1147.

14 Later courts, when presented with similar issues, concurred. A wage statement complies  
 15 with Labor Code Section 226(a) “when a plaintiff employee can ascertain the required  
 16 information by performing simple math, using figures on the face of the wage statement.”  
 17 *Hernandez v. BCI Coca-Cola Bottling Co.*, 554 F. App’x 661, 662 (9th Cir. 2014), citing *Morgan*  
 18 *v. United Retail Inc.*, 186 Cal. App. 4th 1136 (2010). *See also Magadia v. Wal-Mart Assocs.*,  
 19 *Inc.*, 319 F. Supp. 3d 1180, 1190 (N.D. Cal. 2018) (“[I]f a wage statement does not list a  
 20 plaintiff’s hourly rate it may still comply with §226(a)(9) if it indicates hours worked and total  
 21 pay because the employee can divide total pay by hours worked to determine the hourly rate.”);  
 22 *Ontiveros v. Satellite Fulfillment, Inc.*, No. CV 15-7118-DMG (RAOx), 2017 WL 6261476, at \*7  
 23 (C.D. Cal. Oct. 12, 2017) (wage statement not violative of Section 226(a) if employee can  
 24 perform simple division and addition).

25 The meal period premium, denominated as “Cal Meal” on the Preload PTS wage  
 26 statements, is understandable and ascertainable on the face of the wage statement, as confirmed  
 27 by a number class member Preload PTS. *See* Section II.E *supra*. Both the total paid for meal  
 28

period premiums and the hourly rate are identified on the wage statement. All the information necessary to ascertain how many premiums are paid is listed and no outside information is needed to understand the payment. Indeed, even when presented with a wage statement in the middle of a deposition, not one Preload PTS had any trouble performing the simple arithmetic to understand how many premiums he or she received. *See* Section II.E *supra*. Plaintiff herself affirmed her understanding that she received a California meal period premium and that this premium was paid at the hourly rate of pay. Brown Decl., Ex. A (Santos Dep. 164:1-4 (“Q: You received the California meal period premium at your hourly rate of pay. Do you see that? A: Yes.”).) Preload PTS wage statements which show California meal period premiums as a lump sum amount alongside information regarding employee’s regular rate of pay comply with Section 226 and Wage Order 9.

C. **Summary Judgment is Proper on UPS’s Third Separate and Affirmative Defense Because Plaintiff Cannot Establish That She or the Class Suffered Injury from any Allegedly Improper Wage Statement**

Even if UPS’s wage statement were deemed noncompliant with Labor Code Section 226(a), Plaintiff would still be required to prove that she and Preload PTS suffered injury on account of the alleged violation in order to claim statutory penalties under Section 226(e). She cannot do so.

An employee is only “deemed to have suffer[ed] an injury” if the employee is unable to “promptly and easily determine” (1) the gross or net wages paid; (2) which deductions the employer made from the employee’s gross wages; (3) the name and address of the employer; or (4) the name of the employee and the last four digits of his or her social security number (or an employee identification number other than a social security number). Cal. Lab. Code § 226(e)(2). “Promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information. Cal. Lab. Code § 226(e)(2)(C).

As discussed above, all the information Plaintiff or Preload PTS would need to determine the number of meal premiums paid is “readily ascertain[able]” from the wage statement “without reference to other documents or information.” Cal. Lab. Code Section 226(e)(2)(C). All Plaintiff or any other Preload PTS would have to do to determine the number of meal periods paid on any

1 given pay period is to divide the “Cal Meal” payment by his or her hourly rate (clearly displayed  
 2 on the same wage statement). *See* Sections II.E, II.B.2.b *supra*. That the UPS wage statement  
 3 requires Plaintiff to perform simple division does not, as a matter of law, constitute “injury” for  
 4 purposes of Labor Code section 226(e). *See, e.g., Price*, 192 Cal. App. 4th at 1143 (“simple  
 5 math” insufficient to establish section 226(e) injury). And Plaintiff confirmed that she was not  
 6 confused. Brown Decl., Ex. A (Santos Depo 164:1-16 (“Q: You received the California meal  
 7 period premium at your hourly rate of pay. Do you see that? A: Yes. Q: So you recall that you  
 8 were, in fact, paid meal premiums for meal periods you did not take? A: Yes. Q: -- UPS Paid  
 9 you California meal period premiums. Is that correct? A: Yes”); 163:22-25 (“Q: Pay period  
 10 ending December 23<sup>rd</sup>, 2017, you were paid another California meal period premium. Do you see  
 11 that? A: Yes”).)<sup>6</sup>

12 **D. Summary Judgment is Proper on Defendant’s Tenth Separate and**  
 13 **Affirmative Defense because Plaintiff Cannot Show Any Intention to Violate**  
 14 **the Statute**

14 Finally, even if Plaintiff were able to demonstrate noncompliance with Labor Code  
 15 section 226(a)(9) and were able to demonstrate “injury” cognizable by section 226(e), her claim  
 16 for statutory penalties still fails because she cannot establish that UPS “knowingly and  
 17 intentionally” failed to comply with section 226(a)(9).

18 *Amaral v. Cintas Corporation No. 2*, 163 Cal. App. 4th 1157, 1195, 1201-04 (2008), set  
 19 forth the requirements of the “good faith” defense to penalties imposed pursuant to Labor Code  
 20 section 203, which also apply to the imposition of statutory penalties pursuant to Labor Code  
 21 section 226(e). *See, e.g., Harris v. Vector Marketing Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D.  
 22 Cal. 2009); *Reber v. AIMCO/Bethesda Holdings, Inc.*, No. SA CV07-0607 DOC (RZx), 2008 WL

23 \_\_\_\_\_  
 24 <sup>6</sup> To the extent Plaintiff attempts to argue in her Opposition that while she understood her wage  
 25 statement, others did not, such an argument would be an admission that Plaintiff lacks standing to  
 26 pursue both the class and the representative claims, which would require decertification of the  
 27 class. *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007); *Armstrong v.*  
 28 *Davis*, 275 F.3d 849, 860 (9th Cir. 2001) (“In order to assert claims on behalf of a class, a named  
 plaintiff must have personally sustained or be in immediate danger of sustaining some direct  
 injury as a result of the challenged statute or official conduct.”) (internal quotations omitted). *See*  
 also *Williams v. Superior Court*, 3 Cal. 5th 531, 558, (2017) (“PAGA imposes a standing  
 requirement; to bring an action, one must have suffered harm.”).



4384147, at \*9 (C.D. Cal., Aug. 25, 2008). In this respect, a “good faith dispute” occurs “when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee.” *Amaral*, 163 Cal. App. 4th at 1201, quoting from 8 Cal. Code 6 Regs. § 13520. Moreover, the “fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.* Rather, “[s]o long as no other evidence suggests the employer acted in bad faith, presentation of a good faith defense, based in law or fact, will negate a finding of willfulness.” *Id.* at 1204. In particular, a good faith defense exists if “the state of the law was not clear,” as when there are conflicting appellate decisions. *Id.* at 1201.

UPS has a good-faith defense to Labor Code section 226(e). Based on *Morgan* and its progeny, UPS wage statement does not violate Labor Code section 226(a) and, in any event, substantially complies with it. Insofar as there is no statute requiring the meal premium wage rate to be separately stated or a requirement that the specific number of meal premiums paid per wage statement, at most this Court would have to conclude that “the state of the law [is] not clear.” As a matter of law, UPS has a good faith defense to any violation of section 226(e).

**E. Summary Judgment as to the Seventh Cause of Action on Plaintiff’s PAGA Claim is Proper Because UPS Wage Statements Do Not Violate Section 226(a)**

Plaintiff’s representative PAGA action is derivative of her wage statement claim. *See* Compl. ¶¶ 80, 82 (“Plaintiff is an “aggrieved employee” as defined by Labor Code § 2699, because she is an employee of Defendant, and one or more of the Labor Code violations was committed against her,” and “Plaintiff also alleges Defendants violated California Labor Code Section 226.3 based on the previously alleged violation of Labor Code section 226(a), as described in the fourth cause of action.”).

Because UPS’s wage statements do not violate section 226(a) as articulated in Section II.B above, they cannot form the valid basis for derivative PAGA penalties. *See e.g. In re Taco Bell Wage and Hour Actions*, No. 1:07-cv-0314-SAB, 2016 WL 2755938, at \*5 (E.D. Cal. April 8, 2016) (declining to award PAGA penalties where plaintiff failed to prove that a Labor Code violation has occurred), citing Cal. Lab. Code §§ 2699(a), 2699(f)(2); *see also Zackaria v. Wal-*



1 *Mart Stores, Inc.*, 142 F. Supp. 3d 949, 958 (C.D. Cal. 2015) (“PAGA contemplates civil  
 2 penalties for ‘a violation’ of the California Labor Code.”); *Hibbs-Rines v. Seagate Techs., LLC.*,  
 3 No. C 08-05430 SI, 2009 WL 513496, at \*4 (N.D. Cal. Mar. 2, 2009) (“‘An aggrieved employee’  
 4 may recover civil penalties for *violations* of certain sections of the Labor Code”) (emphasis in  
 5 original); *Plaisted v. Dress Barn, Inc.*, No. 2:12-cv-01679-ODW (SHx), 2012 WL 4356158, at  
 6 \*2 (C.D. Cal. Sept. 20, 2012) (“[E]very PAGA action in some way requires *some* individualized  
 7 assessment regarding whether a Labor Code violation has occurred.”) (emphasis in original).

8 **F. Summary Judgment as to the Seventh Cause of Action is Proper Because UPS**  
**Wage Statements Substantially Comply with the Labor Code**

9 Even if the Court were to find some level of non-compliance in the way that UPS  
 10 expressed the meal period penalty, PAGA penalties would still not apply. A PAGA action “is  
 11 fundamentally a law enforcement action designed to protect the public and not to benefit private  
 12 parties.” *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009). The primary purpose of  
 13 assessing civil penalties is thus “to secure obedience to statutes and regulations imposed to assure  
 14 important public policy objectives.” *Kizer v. County of San Mateo*, 53 Cal. 3d 139, 147-48  
 15 (1991). Under California law, “substantial compliance with statutory directives will suffice if the  
 16 purpose of the statute is thereby satisfied.” *Downtown Palo Alto Com. for Fair Assessment v.*  
 17 *City Council*, 180 Cal. App. 3d 384, 395 (1986). In this regard, “[t]he paramount consideration is  
 18 the objective of the statute.” *Id.* “Where there is compliance as to all matters of substance[,]”  
 19 technical deviations are not to be given the stature of *noncompliance*.” *Cal-Air Conditioning, Inc.*  
 20 *v. Auburn Union School Dist.*, 21 Cal. App. 4th 655, 668 (1993) (emphasis supplied). Indeed,  
 21 “[u]nless the intent of a statute can only be served by demanding strict compliance with its terms,  
 22 substantial compliance is the governing test.” *County of Tulare v. Campbell*, 50 Cal. App. 4th  
 23 847, 853 (1996). Finally, “[t]he substantial compliance doctrine may apply to statutes whose  
 24 provisions are mandatory, employing the term ‘shall.’” *Eger v. VW Credit, Inc.*, No. Civ.  
 25 05CV2224LWMC, 2007 WL 433274, at \*2 (S.D. Cal., Jan. 29, 2007).

26 In *Hernandez*, the court found that when an employer’s wage statements “substantially  
 27 comply” with Labor Code section 226, no civil penalties will lie. 2012 WL 12272348, at \*\*7-8  
 28

(“to the extent that Defendant’s wage statements arguably are not in technical compliance with Section 226(a)(9), the Court concludes that they are in ‘substantial compliance.’”), *aff’d*, 554 F. App’x 661 (9th Cir. 2014). As discussed above, UPS wages statements indicate the total amount of premiums paid and the Preload PTS hourly rate. Accordingly, the specific number of meal premiums is readily apparent utilizing simple division and the wage statement substantially complies with the objective of the statute, which is to ensure that employees are able to determine all of their gross earnings. Summary judgment is proper as to the PAGA claim related to the alleged defective wage statement for this additional reason.

**IV. SUMMARY JUDGMENT IS PROPER ON PLAINTIFF’S INDIVIDUAL SECOND CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS**

In addition to summary judgment on Plaintiff’s and the certified class’s wage statement claim, summary judgment is appropriate as to Plaintiff’s individual rest break claim.

In denying certification, the Court has already held that “there is no evidence of a uniform or even a pervasive policy of requiring employees to work through rest breaks and not paying rest break premiums.” Dkt. No. 115, p. 15. There is also no triable issue of material fact that supports Plaintiff’s *individual* rest break claims. Plaintiff alleges that “Defendant failed to authorize and permit rest breaks” and that she was “routinely required to work through rest periods at the direction of Defendant and/or with Defendant’s knowledge and acquiescence.” Dkt. No. 16, p. 12. Plaintiff further alleges that UPS required that Plaintiff “work through [her] rest periods and/or fail[ed] to relieve [her] of [her] duties for [her] rest periods.” Dkt. No. 16, p. 13.

California law requires employers to “authorize and permit all employees to take rest periods, which in so far as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Specifically, the California Supreme Court has stated that:

[a]n employer’s duty with respect to meal breaks under both section 512, subdivision (a) and Wage Order No. 5 is an obligation to provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.

1 *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1040-1041 (2012). Furthermore,  
 2 “the employer is not obligated to police meal breaks and ensure no work thereafter is performed.  
 3 Bona fide relief from duty and the relinquishing of control satisfies the employer’s obligations,  
 4 and work by a relieved employee during a meal break does not thereby place the employer in  
 5 violation of its obligations and create liability for premium pay.”

6 Plaintiff testified that she was entitled to rest breaks, that she always took her rest breaks,  
 7 that she was relieved from all duty for her rest breaks, that no one from UPS impeded her from  
 8 taking rest breaks, that she was trained and regularly reminded about UPS’s rest break policies,  
 9 and that, as a supervisor, it was her responsibility to make sure that the employees she managed  
 10 also complied with UPS’s lawful rest break policy. Specifically, Plaintiff testified to the  
 11 following:

- 12 • “Q. And you testified earlier that you’re not suing UPS for rest breaks. So is it correct  
 13 to assume that no one prevented you from taking a 15-minute rest break during your  
 14 employment at UPS? A. Yes. Q. Okay. And you never worked during your 15-  
 15 minute rest breaks – A. No.” Santos Depo. 152:21-153:4.
- 16 • “Q. Okay. And you were told that you were entitled to take rest breaks, correct? A.  
 17 Yes.” Santos Depo. 91:5-7.
- 18 • “Q. Okay. So the full-time supervisors would text the part-time supervisors the times  
 19 of the rest and meal breaks? A. Yes.” Santos Depo. 111:9-12.
- 20 • “Q. And one of your duties as a part-time supervisor was to make sure that your pre-  
 21 loaders who reported to you complied with UPS policies, right? A. Yes. Q. And that  
 22 included meal and rest break policies, right? A. Yes.” Santos Depo. 83:22-84:4.
- 23 • “Q. Okay. And during that time, did you also receive copies of the company’s meal  
 24 and rest break and off-the-clock policies? A. It’s -- it’s a possibility. Q. Were you at  
 25 least told about them? A. Yes.”); Santos Depo. 90:20-25.
- 26 • “Q. And you did get a PCM, every now and then, on meal and rest break compliance,  
 27 right? A. Sometimes. Q. And you understand that UPS trains all employees on meal  
 28 and rest break compliance, right? A. Yes.” Santos Depo. 123:8-13.

1 Brown Decl., Ex. A.

2 Because UPS unequivocally authorized and permitted Plaintiff to take her rest breaks,  
3 summary judgment is proper on the second cause of action.

4 **V. CONCLUSION**

5 For the foregoing reasons, UPS respectfully requests that the Court grant its Motion for  
6 Summary Judgment and enter dismissal with prejudice as to the Second and Fourth Causes of  
7 action and dismiss PAGA penalties as to the certified wage statement claim.

8 DATED: March 30, 2021

GBG LLP

9 BY: /s/ Elizabeth A. Brown

10 ELIZABETH A. BROWN

11 Attorneys for Defendant  
12 UNITED PARCEL SERVICE, INC.